

Division of Securities
Utah Department of Commerce
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

**IN THE MATTER OF THE LICENSES
OF:**

**KIMBERLY SECURITIES, CRD #19241;
KIMBERLY CARRELLA, aka
KIMBERLY MISARACA, CRD #2879704;
NOEL BELMONTE, CRD #2610336;
MICHAEL ROBBINS, CRD #4206092;
PHILIP HOURICAN, CRD #2068332;
DARREN TOWLE, CRD 4214742;
ANTHONY GIUNTA, CRD #4199665; and
JOHN P. DONOVAN, II, CRD #2967475;**

Respondents.

**PETITION FOR ORDERS
REVOKING LICENSES AND
BARRING OR CENSURING
LICENSEES**

Docket No. SD-02-0055

Docket No. SD-02-0056

Docket No. SD-02-0057

Docket No. SD-02-0058

Docket No. SD-02-0059

Docket No. SD-02-0060

Docket No. SD-02-0061

Docket No. SD-02-0062

Pursuant to the authority of Utah Code Ann. § 61-1-6, the Utah Division of Securities, (Division), hereby petitions the Director of the Division, (Director) to enter an Order, subject to the approval of a majority of the Securities Advisory Board, to revoke the licenses of Kimberly Securities, CRD #19241; Kimberly Carrella, aka Kimberly Misaraca, CRD #2879704; Noel Belmonte, CRD #2610336; Michael Robbins, CRD #4206092; Philip Hourican, CRD #2068332; Darren Towle, CRD 4214742; Anthony Giunta, CRD #4199665; and John P. Donovan , II, CRD

#2967475; (collectively “Respondents”); bar or censure Respondents, and to assess fines totaling \$2,366,378.79. In furtherance of this petition, the Division alleges:

STATEMENT OF FACTS

1. Kimberly Securities, CRD #19241, (Kimberly) is a broker-dealer that has been licensed by the Division since January 7, 2000. Kimberly maintains its principal place of business at 775 Park Avenue, Suite 145, the Huntington Atrium, Huntington, NY 11743.

Kimberly does not maintain an office in Utah.
2. Kimberly Carrella, aka Kimberly Misaraca, CRD #2879704, (Carrella) was, at all relevant times, the president of Kimberly. Carrella was also the compliance officer for Kimberly from July 6, 2000 until July 27, 2001. Carrella was licensed by the Division as a securities agent from February 14, 2000 until January 11, 2001. She became re-licensed by the Division as a securities agent on January 31, 2001. The Division is informed, and believes, that Carrella lives in or near Bellport, New York.
3. Carrella was not registered as a securities agent by the NASD from January 11, 2001 until July 9, 2001. For six-months, Carrella was acting as a securities agent in violation of NASD rules.
4. Noel Belmonte, CRD #2610336, (Belmonte) was employed by Kimberly as a securities agent and was licensed by the Division from March 2000 until November 2000 and again from March 2001 until August 2001. Belmonte is currently employed by Milestone Financial Services as a securities agent. He has been licensed by the Division since

October 25, 2001. The Division is informed, and believes, that Belmonte lives in or near Bellport, New York.

5. Michael Robbins, CRD #4206092, ("Robbins") was employed by Kimberly as a securities agent and was licensed by the Division from June 2000 until December 2001. Robbins is currently employed by Seaboard Securities as a securities agent, but is not currently licensed by the Division. The Division is informed, and believes, that Robbins lives in or near Bellport, New York.
6. Philip Hourican, CRD #2068322, (Hourican) was employed by Kimberly as a securities agent and has been licensed by the Division since April 2001. Hourican was previously licensed by the Division as an agent of Kimberly from March 2000 until July 2000. The Division is informed, and believes, that Hourican lives in or near North Babylon, New York.
7. Darren Towle, CRD #4214742, (Towle) was employed by Kimberly as a securities agent and was licensed by the Division from June 2000 until October 2001. Towle is currently employed by Seaboard Securities as a securities agent and has been licensed by the Division since November 27, 2001. The Division is informed, and believes, that Towle lives in or near Islandia, New York.
8. Anthony Giunta, CRD #4199665, (Giunta) was employed by Kimberly as a securities agent and was licensed by the Division from June 2001 until December 2001. Giunta is currently employed by Seaboard Securities as a securities agent, but is not currently

licensed by the Division. The Division is informed, and believes, that Giunta lives in or near Islandia, New York.

9. John P. Donovan, II, CRD #2967475, (Donovan) was employed by Kimberly as a securities agent and was licensed by the Division from May 2000 until June 2001. Donovan is currently employed by Ladenburg Capital Management as a securities agent and has been licensed by the Division since May 31, 2001. The Division is informed, and believes, that Donovan lives in or near North Babylon, New York.
10. James Mancuso, CRD #2493826, (Mancusco) was employed by Kimberly as a securities agent, but has never been licensed by the Division. Mancuso applied for a securities license with the Division on March 22, 2000, but the application was withdrawn on March 31, 2000 after the Division notified him of its intent to deny his application due to his history of past discipline.
11. On November 16, 2000, Mancuso contacted Phil C. Gardner, a Utah resident, and solicited him to open an account with Kimberly.
12. On November 16, 2000, Mancuso sent a letter to Gardner thanking him for opening the account.
13. Between November 27, 2000 and December 14, 2000, Carrella sent three letters to Gardner requesting money for purchases. On January 9, 2001, Mancuso sent Gardner a letter requesting money for a trade he made.

14. Gardner told the Division he became concerned about trades placed in his account without his authorization.
15. CIBC World Markets, Inc.(CIBC) was the clearing firm for Kimberly. CIBC processed trades on behalf of Kimberly and its clients.
16. On February 21, 2001, Gardner faxed a letter to Carrella, directing Kimberly to stop all trades in his account.
17. On February 22, 2001, Gardner faxed a letter to James Lagratta at CIBC requesting that all trades in his account be stopped.
18. In a letter dated February 23, 2001, Gardner reported the problems with his account to the Division, including reckless handling of his account and unauthorized trades.
19. Although the new account form and option agreement prepared by Kimberly state that Gardner had two years of option trading experience, Gardner had little investment experience in stocks and no experience in options. Gardner did not fill out the new account form.
20. On April 27, 2001, Mancuso bought 1,000 shares of Blue Martini Software Inc. (Blue Martini) stock in Gardner's account. On April 30, 2001, Mancuso sold the 1,000 share of Blue Martini trades in Gardner's account.
21. On May 9, 2001 Gardner faxed Carrella a letter, requesting that Gardner's account be closed, that all securities be sold, and the proceeds from the sale be sent to him.

22. Also on May 9, 2001, Gardner faxed a letter to CIBC requesting that CIBC help facilitate the closing of his account at Kimberly.
23. On May 31, 2001, Mancuso purchased another thousand shares of Blue Martini for Gardner on margin. This occurred after Gardner requested that no additional trades be placed and that his account be closed.
24. On June 27, 2001, Division auditors conducted an audit of Kimberly. The audit and subsequent investigation revealed numerous violations of the Utah Uniform Securities Act and Rules.

Unlicensed Agents

25. Mancuso was not licensed to sell securities in Utah.
26. Kimberly had 58 active Utah accounts that were opened between September 2000 and July 2001. Twenty-four of these accounts were opened by or had trades executed by agents who were not licensed in Utah at the time the accounts were opened or the trades were executed.
27. The following accounts were opened by agents of Kimberly who were not licensed in Utah at the time the accounts were opened:

<u>Account</u>	<u>Unlicensed Agent</u>	<u>Solicitation</u>
Frankie Barlow	Hourican	February 2000
Buddy Favero	Robbins	April 2001
Phil Gardner	Mancuso	November 2000

<u>Account</u>	<u>Unlicensed Agent</u>	<u>Solicitation</u>
Dana Hales	Robbins	February 2001
David Holmes	Robbins	February 2001
Leon Perry	Robbins	March 2001
Russell Vernon	Robbins	March 2001
Dave Larsen	Robbins	March 2001
David Jeffs	Mancuso	March 2001
Eddie Brinkerhoff	Mancuso	March 2001
Herb Solosth	Mancuso	March 2001
Paul McCoard	Mancuso	March 2001
Mansoor Pourirzaie	Robbins	March 2001
Dennis Whitehead	Hourican	April 2001
Jerry Shaw	Mancuso	May 2001
Alan Beck	Hourican	May 2001
Haymer Morris	Hourican	May 2001
Robert Cummings	Hourican	June 2001
Robert Bohn	Towle	May 2001
Mark Stevenson	Mancuso	November 2001

28. The following unlicensed agents of Kimberly placed trades in the following accounts:

<u>Account</u>	<u>Unlicensed Agent(s)</u>	<u># of Transactions while unlicensed</u>
Paul Burt	Mancuso/Carrella	40/89
Buddy Favero	Robbins	8
Phil Gardner	Mancuso/Carrella	43/3
Dana Hales	Robbins/Carrella	14/1
David Holmes	Robbins	9
Rodger Lyman	Mancuso/Carrella	4/3
Leon Perry	Robbins	1
Russell Vernon	Robbins	4
Dave Larsen	Robbins	1
David Jeffs	Mancuso	4
Eddie Brinkerhoff	Mancuso	2
Herb Solosth	Mancuso	1
Paul McCoard	Mancuso	1
Mansoor Pourirzaie	Robbins	4
Dennis Whitehead	Hourican	1
Jerry Shaw	Mancuso	1
Alan Beck	Hourican	1
Haymer Morris	Hourican	1
Robert Cummings	Hourican/Carrella	1/1
Robert Bohn	Towle	1
Mark Stevenson	Mancuso	2

<u>Account</u>	<u>Unlicensed Agent(s)</u>	<u># of Transactions while unlicensed</u>
Steven Moldenhauer	Mancuso	1
Garth Christensen	Carrella	280

29. Carrella and Belmonte aided and abetted the unlicensed agents in circumventing securities laws by allowing their (Carrella and Belmonte's) names to be listed as the broker of record or as a joint broker for opening accounts and executing trades.

Unauthorized Trading

30. The Division interviewed clients of Kimberly whose accounts were excessively traded. Each of these accounts were traded without authorization. Unauthorized trades in the account, ranged from one trade to 90 percent of all trades in the account. Even the accounts of four clients whose accounts had not been excessively traded were traded without authorization.
31. Steven Moldenhauer authorized Kimberly to make only the first two purchases. He did not authorize Kimberly to place any trades after the first two. Fourteen additional trades were placed in the account.
32. Roger Lyman authorized Kimberly to make only the first trade, but Kimberly placed 14 additional trades in the account.
33. Kimberly bought Ariba stock on margin for Ty R. Jensen without his authorization.

34. Carrella telephoned Larry Jacobsen and said she had placed a trade and asked Jacobsen to send in money. Jacobsen did not authorize the trade.
35. Kimberly placed trades on August 21, 2000 in Dennis Durbano's account without his authorization.
36. Paul Burt estimated that 90 percent of trades placed in his account by Kimberly were done without his authorization.
37. David W. Holmes' did not authorize Kimberly to buy and/or sell Juniper, RF Microdevices, BEAS, Atmel, Ephiphany, Ariba, Digex and stock symbols EMU and LEX.
38. Kimberly traded Ariba and I2 Technologies stocks in Dana Hales' account without his authorization.
39. Kimberly bought 1500 shares of Rambus for Buddy C. Favero without his authorization.
40. Frankie Barlow estimated that 75 percent of the trades placed by Kimberly were done without her authorization.
41. Most of the trades made by Kimberly in Robert Allphin's accounts were done without his authorization.
42. Garth Christensen estimated that 50 percent of the trades were done without his authorization.
43. Kimberly sold shares of Intel and purchased shares of Ariba in Dean Healy's account without his authorization.

44. Carrella bought stock for Robert Cummings and then told him to send in money.
45. William Sharp authorized a purchase of Equinex, but all subsequent purchases and sales in his account by Kimberly were unauthorized.
46. Kimberly purchased 1900 shares of Ariba for William Wright without his authorization.
47. Marlon Roper gave Kimberly no authorization to purchase any security in his account.

Excessive Trading/Churning

48. Kimberly had 62 Utah accounts of record from September 2000 through July 2001. Fifty-eight of these accounts showed trading activity. Fifteen of these accounts were excessively traded to generate commissions, otherwise known as “churning.”
49. The following accounts were excessively traded and/or churned:
 - a. From October 2000 to April 2001, Robert L. and Julie Allphin had an account with Kimberly. During that time, Belmonte and Carrella generated commissions totaling \$8,606.29. Kimberly turned the portfolio over an average of 133.59 times per year. With compensation, margin and other expenses, the account would have been required to earn 270.58 annually to break even. Allphin also had an individual self-employed plan IRA. From May 2001 through July 2001, Carrella and Belmonte generated commissions of \$1,081.15. Kimberly turned the portfolio over an average of 6.2 times per year. Given the compensation, margin and other expenses, the account needed to earn 19.44 percent annually to break even.

- b. From October 2000 to January 2001, Frankie Barlow transferred approximately \$42,896.04 in securities to Kimberly. During that time, Carrella generated \$24,871.18 in commissions, markups and fees. Kimberly turned the portfolio over an average of 91.64 times per year. With compensation, margin and other expenses, the account needed to earn 610.82 percent annually to break even.
- c. From October 2000 to April 2001, Paul Burt deposited \$416,752.19 with Kimberly. During that time, Belmonte and Carrella generated \$165,900.01 in commissions, markups and fees. Kimberly turned the portfolio over an average of 201.72 times per year. With compensation, margin and other expenses, the account needed to earn 915.72 annually to break even.
- d. From March 2001 to December 2001, Garth Christensen deposited \$136,944.90 with Kimberly. During that time, Carrella generated \$82,547.46 in commissions and fees. Kimberly turned the portfolio over an average of 102.74 times per year. With compensation, margin and other expenses, the account needed to earn 291.91 percent annually to break even.
- e. From May 2001 to October 2001 Dennis Durbano deposited \$10,206.35 with Kimberly. During that time, Carrella and Belmonte generated \$968.53 in commissions. Kimberly turned the portfolio over an average of 22.55 times per year. With compensation, margin and other expenses, the account needed to earn 41.16 percent annually to break even.

- f. From April 2001 to September 2001, Buddy C. Favero deposited \$14,150.00 with Kimberly. During that time, Robbins generated commissions totaling \$2,618.92. Kimberly turned the portfolio over an average of 28.02 times per year. With compensation, margin and other expenses, the account needed to earn 112.53 percent annually to break even.
- g. From November 2000 through April 2001, Phil Gardner deposited \$40,075.75 with Kimberly. During that time, Mancuso generated \$9,802.57 in commissions. Kimberly turned the portfolio over an average of 83.80 times per year. With compensation, margin and other expenses, the account needed to earn 535.19 percent annually to break even.
- h. From March 2001 to April 2001, Dana Hales deposited \$6,692.50 with Kimberly. During that time, Carrella and Robbins generated \$788.20 in commissions. Kimberly turned the portfolio over an average of 30.16 times per year. With compensation, margin and other expenses, the account needed to earn 90.04 percent annually to break even.
- i. From March 2001 to April 2001, Dean Healy deposited \$1,465.00 with Kimberly. During that time, Carrella and Belmonte generated \$237.58 in commissions. Kimberly turned the portfolio over an average of 22.10 times per year. With compensation, margin and other expenses, the account needed to earn 145.07 percent annually to break even.

- j. From April 2001 to May 2001, David W. Holmes deposited \$5,227.50 with Kimberly. During that time, Carrella and Robbins generated \$510.23 in commissions. Kimberly turned the portfolio over an average of 27.35 times per year. With compensation, margin and other expenses, the account needed to earn 113.27 percent annually to break even.
- k. From October 2000 to November 2000, Larry and Shelly Jacobsen deposited \$2,772.87 with Kimberly. During that time, Carrella and Belmonte generated \$4,962.59 in commissions. Kimberly turned the portfolio over an average of 227.45 times per year. With compensation, margin and other expenses, the account needed to earn 1877.41 percent annually to break even.
- l. From May 2001 to July 2001, Ty R. Jensen deposited \$7078.00 with Kimberly. During that time, Carrella and Belmonte generated \$365.40 in commissions. Kimberly turned the portfolio over an average of 51.75 times per year. With compensation, margin and other expenses, the account needed to earn 116.22 percent annually to break even.
- m. From March 2001 to April 2001, Rodger M. Lyman deposited \$4,102.50 with Kimberly. During that time, Carrella and Belmonte generated \$644.17 in commissions. Kimberly turned the portfolio over an average of 52.78 times per year. With compensation, margin and other expenses, the account needed to earn 133.93 percent annually to break even.

- n. From May 2001 to July 2001, Steven Moldenhauer deposited \$10,055.55 with Kimberly. During that time, Carrella and Belmonte generated \$2,152.47 in commissions. Kimberly turned the portfolio over an average of 50.19 times per year. With compensation, margin and other expenses, the account needed to earn 271.46 percent annually to break even.

Discretionary Authority

51. Discretionary authority given to a broker-dealer agent can only be authorized if done in writing and signed by the account owner(s).
52. A discretionary account as described by Barron's Financial Guide is an account empowering a broker or adviser to buy and sell without the client's prior knowledge or consent. Some clients set broad guidelines, such as limiting investments to blue chip stocks.
53. Kimberly agents controlled the accounts, made the decisions on what to buy and sell, and when to buy and sell.
54. With one exception, none of the clients whose account(s) were excessively traded gave Kimberly authority, either verbally or in writing, to exercise discretion on their behalf.

Suitability

55. NASD Conduct Rule 2310 requires that, in recommending to a customer on the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any,

disclosed by such customer as to his other security holdings and to his financial situation and needs.

56. R164-6-1g(C)(3) of the Code deems excessive trading as a dishonest or unethical business practice to recommend “to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.”
57. Margin accounts are brokerage accounts allowing the client to borrow money from broker-dealers to buy additional securities. The client is charged an interest rate on the money borrowed and can settle the margin loan by depositing additional money, depositing additional securities or by selling securities.
58. Margin accounts are often used to leverage the accounts to buy more securities but add additional risk and accounts are subject to margin calls. Margin calls require money or securities be deposited or stocks sold to cover the calls received.
59. Eleven of the accounts that were excessively traded, were traded on margin.
60. Nine of the accounts that were excessively traded received margin calls.
61. Trading on margin increases risk.
62. Of these accounts, margin was recommended to them by the agent or was done without the knowledge of the client

Failure to Execute

- 63. Buddy C. Favero told Robbins to sell Intel held in his account, but no trade was made on the day of the request
- 64. Frankie Barlow told Carrella to sell the Ariba and Real Networks stocks in her account, but no sale was made.
- 65. Dana Hales told Robbins to sell all securities in his account, but the sale was not performed in a timely manner.
- 66. David W. Holmes told Robbins three different times to sell his entire account, including Valicert, Ariba and Juniper, but the sale was not performed.
- 67. Garth Christensen told Carrella to sell securities in his account, but the sale was not timely.

High Pressure, Boiler Room Sales Tactics

- 68. According to Barron's dictionary of finance and investment terms, the definition for boiler room is:
 - [a] place where high-pressure salespeople use banks of telephones to call lists of potential investors (known in the trade as sucker lists) in order to peddle speculative, even fraudulent, securities. They are called boiler rooms because of high-pressure selling. Boiler room methods, if not illegal, clearly violate the National Association of Securities Dealers' *RULES OF FAIR PRACTICE*, particularly those requiring the recommendations be suitable to a customer's account.
- 69. Nineteen of thirty-seven clients interviewed stated that Kimberly's salespeople used boiler-room tactics. Kimberly's salespeople used high-pressure boiler-room sales tactics

and were very pushy. The clients particularly recalled agents making comments or statements such as “I’ll make you a millionaire,” or “ I’ll double your money,” or “you’re guaranteed to make profits.”

- 70. Kimberly’s securities agents belittled the clients with comments such as “I won’t waste my time on you or give you any more of my good stock picks because I can see you’re not worth it.”
- 71. Kimberly’s securities agents, particularly Carrella, employed high-pressure sales tactics including abusive and profane language.
- 72. Kimberly made unauthorized trades in nineteen of thirty-seven client accounts.

Supervision

- 73. Carrella was the compliance officer for Kimberly effective July 6, 2000, through Carrella July 27, 2001.
- 74. While Carrella was compliance officer, Kimberly violated SEC, NASD, and Utah State laws governing the licensing, soliciting of clients, and authorizing of agents. Additional areas of violation are failure to supervise agents of the firm regarding excessive trading or churning, suitability, unlicensed agents, and unauthorized trades. Carrella was responsible to supervise the agents to make sure they were complying with state, NASD, and SEC laws and rules.
- 75. On November 15, 2000, Kimberly placed trades under the number of a securities agent who had terminated his employment with Kimberly on November 14, 2000.

76. On November 15, 2000, Kimberly placed trades under the number of another securities agent who had terminated his employment with Kimberly on May 29, 2001.
77. Kimberly was responsible for licensing its agents in the states where they did business and submitted Mancuso's application for licensure in Utah. Mancuso's application was withdrawn on March 31, 2000 after receiving notice that the Division would deny his application because of his past disciplinary history. After withdrawing the application, Mancuso continued to transact business in Utah.

Fraud, Omission of Material Fact, Misrepresentation

78. During the course of the conversations between Respondents and their clients, Respondents failed to disclose or omitted the following material facts.
79. Respondents were not licensed to sell securities in Utah as required by law;
- a. Securities were being purchased on margin without the proper margin agreements and/or without the knowledge and approval of the client.
 - b. Respondents would exercise discretion in client accounts without authorization.
 - c. Kimberly is a boiler room.

GROUND FOR RELIEF

Jurisdiction is vested in the Director, pursuant to § 61-1-18 of the Act.

82. Section 61-1-6(1), 61-1-6(1)(b), 61-1-6(1)(g), and 61-1-6(1)(j) of the Act provide that upon approval by a majority of the Securities Advisory Board, the Director, by means of adjudicative proceedings conducted in accordance with the Administrative Procedures

Act, codified at Utah Code Annotated, Title 63, Chapter 46b; may issue an order suspending or revoking any license granted by the Division, censure or bar any licensee, and may impose a fine if he finds that it is in the public interest and that the licensee has (1) willfully violated or willfully failed to comply with any provision of this chapter. . . any rule or order under this chapter, (2) engaged in dishonest or unethical practices in the securities business, or (3) failed to reasonably supervise its agents or employees.

83. Section 61-1-1 of the Act states:

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to:

- 1) employ any device, scheme, or artifice to defraud;
- 2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- 3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

84. Respondents actions, including but not limited to omitting material facts and engaging in high-pressure “boiler-room” sales tactics, violate the anti-fraud provisions of § 61-1-1 of the Act.

85. Section 61-1-3 of the Act states, in relevant part:

- (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.
- (2)(a) It is unlawful for any broker-dealer or issuer to employ or engage an agent unless the agent is licensed.

86. Respondents Hourican, Robbins, Towle and Carrella violated § 61-1-3 (1) of the Act by opening accounts for Utah clients and/or executing transactions in the accounts of Utah clients without the proper license.
87. Kimberly violated § 61-1-3 (2)(a) of the Act by allowing Respondents Hourican, Robbins, Mancuso, Towle, Carrella and allowing them to transact business in the state of Utah without the proper licenses.
88. Respondents Hourican, Robbins, Mancuso, Towle, Carrella, and Kimberly willfully failed to comply with the licensing requirements of §61-1-3 of the Act. For wilful violation, they warrant disciplinary action under §61-1-6 of the Act.
89. Section R164-6-1g of the Utah Administrative Code (“UAC”) defines “dishonest or unethical practices” to include:
- (2) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.
 - (3) recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.
 - (4) executing a transaction on behalf of a customer without prior authorization to do so.
 - (5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both.

...

(15) effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance. .

.

(24) permitting an agent to open or transact business in an account other than the agent's own account, unless the agent discloses in writing to the broker-dealer or issuer with which the agent associates the reason therefor.

...

(28) failing to comply with any applicable provision of the Conduct Rules of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization to which the broker-dealer is subject and which is approved by the SEC.

These prohibitions against dishonest and unethical business practices apply to agents of the broker-dealer in §R164-6-1g(D)(7).

90. Respondents engaged in dishonest and unethical business practices, as described above, by:

- a. Inducing excessive trading in clients accounts for the sole purpose of generating commissions;
- b. Executing transactions without authorization from the clients;
- c. Exercising discretionary authority on client's accounts without prior written authorization;
- d. Engaging in manipulative, deceptive or fraudulent devices including high-pressure sales tactics; and

- e. Placing trades under the registered representative numbers of agents who were no longer at the firm.
105. Engaging in these dishonest and unethical practices warrants disciplinary action under §61-1-6 of the Act.
106. Section 61-1-6 (1)(j) of the Act provides that a disciplinary action may be taken when a licensee “has failed to reasonably supervise his agents or employees.
107. Kimberly, as the broker-dealer, and Carrella, as the president and compliance officer failed to reasonably supervise its agents to detect and prevent violations of the law.
108. By allowing agents to transact securities business in Utah without the proper licenses and engage in dishonest and unethical business practices, Kimberly and Carrella did not adequately supervise their agents.
109. This failure to supervise warrants disciplinary action under §61-1-6(1)(j) of the Act.
110. Based upon Respondents numerous violations of the Act, it is in the public interest that Respondents’ licenses to act as a broker-dealer and/or broker-dealer agent be revoked, that the licensees be censured and barred and that Respondents be ordered to pay to the Division a fine.

REQUEST FOR RELIEF

Wherefore, the Division respectfully requests that the Director enter an Order, subject to the approval of the Securities Advisory Board, and pursuant to Utah Code Ann. § 61-1-6 providing:

1. That Respondents' broker-dealer and/or broker-dealer agent licences be suspended or revoked,
2. That Respondents be censured and barred; and
3. That Respondents be ordered to pay to the Division a fine individually.
 - A. Kimberly Securities, \$50,000.00 for failure to supervise its agents and engaging in a device, scheme, artifice to defraud (being a boiler room).
 - B. Carrella, \$20,000 for engaging in a device, schemes, artifice, practice and omissions on four accounts, \$120,000 for placing 339 trades in seven accounts while unlicensed, \$12,500 for unauthorized transactions in three accounts, \$550,124.43 for placing 603 trades in six accounts which were excessive in size and frequency, \$5,000 for failure to execute in one account, \$10,000 for boiler-room tactics, \$20,000 for unsuitable investments in two accounts, \$15,000 for using discretionary authority in three accounts without proper authority and \$50,000 for failing to supervise her agents. Total to be fined is \$802,624.43.
 - C. Carrella and Belmonte jointly, \$100,000 for device, scheme, artifice, practice and omissions on ten accounts, \$90,000 unauthorized transactions in nine accounts, \$150,472.77 for excessively trading ten accounts, \$5,000 for failure to execute in one account, \$20,000 for boiler-room tactics, \$330,000 for unsuitable investments in ten accounts, and \$100,000 for using discretionary authority in ten accounts without proper authority. Total to be fined is \$795,472.77

D. Mancuso, \$50,000 for device, scheme, artifice, practice and omissions on ten accounts, \$50,000 for unlicensed agent soliciting and opening ten accounts, \$75,000 for placing 97 trades as an unlicensed agent on ten accounts, \$15,000 for placing unauthorized trades on three accounts, \$74,416.81 for excessively trading three accounts, \$10,000 for boiler-room tactics, \$50,000 for unsuitable investments in three accounts, and \$15,000 for using discretionary authority on three accounts without proper authority. Total to be fined is \$339,416.81.

E. Robbins, \$40,000 for device, scheme, artifice, practice and omissions on eight accounts, \$40,000 for unlicensed agent soliciting and opening eight accounts, \$57,500 for placing 36 trades as an unlicensed agent on eight accounts, \$20,000 for placing unauthorized trades on three accounts, \$26,864.70 for excessively trading three accounts, \$10,000 for boiler-room tactics, \$15,000 for failure to execute in three accounts, \$45,000 for unsuitable investments in three accounts, and \$15,000 for using discretionary authority on three accounts without proper authority. Total to be fined is \$269,364.78.

F. Hourican, \$20,000 for device, scheme, artifice, practice and omissions on four accounts, \$25,000 for unlicensed agent soliciting and opening four accounts, \$10,000 for placing four trades as an unlicensed agent on four accounts, \$5,000 for placing unauthorized trades on one accounts, and \$10,000 for boiler-room tactics. Total to be fined is \$70,000.

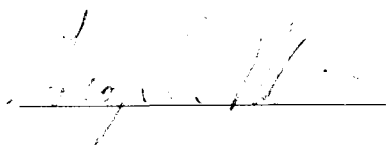
G. Towle, \$2,500 for device, scheme, artifice, practice and omissions on one account, \$2,500 for unlicensed agent soliciting and opening four account, and \$2,500 for placing one trade as an unlicensed agent on one account. Total to be fined is \$7,500.

H. Donovan, \$15,000 for device, scheme, artifice, practice and omissions on three accounts, \$5,000 for boiler-room tactics and \$5,000 for unauthorized trade placed in one account. Total to be fined is \$25,000.

I. Guinta, \$5,000 for device, scheme, artifice, practice and omissions on one account, \$1,000 for an unauthorized trade in one account, and \$1,000 for boiler-room tactics in one account.

DATED this _____ day of _____, 2002.

Utah Division of Securities



George Robison

Director of Licensing

Utah Attorney General's Office



Jeff Buckner

Assistant Attorney General

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600
Facsimile: 801 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

**IN THE MATTER OF THE LICENSE
OF:**

**KIMBERLY SECURITIES, CRD #19241;
KIMBERLY CARRELLA, aka
KIMBERLY MISARACA, CRD
32879704;
NOEL BELMONTE, CRD #2610336;
MICHAEL ROBBINS, CRD #4206092
PHILIP HOURICAN, CRD #2068322;
DARREN TOWLE, CRD #4214742;
ANTHONY GUINTA, CRD #4199665; and
JOHN P. DONOVAN, II, CRD #2967475;**

Respondents.

NOTICE OF AGENCY ACTION

Docket # SD-02-0055
Docket # SD-02-0056

Docket # SD-02-0057
Docket # SD-02-0058
Docket # SD-02-0059
Docket # SD-02-0060
Docket # SD-02-0061
Docket # SD-02-0062

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of mailing of the Petition

for Order Revoking Licenses and Barring or Censuring Licensees. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. § 63-46B-3 through -5, and Utah Code Ann. § 63-46b-20. The facts on which this action is based are set forth in the foregoing Petition for Order Revoking License and Barring or Censuring Licensees.


Within thirty (30) days of the date of this notice, you are required to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Petition. After an answer is received, a hearing, at which Respondent will have a right to appear and defend itself, will be scheduled.

If you fail to file a written response, as set forth herein, you will be held in default and a permanent Order will enter revoking and/or barring or censuring licensees, and a fine may be imposed against you in accordance with Utah Code Ann. §63-46b-11.

The presiding officer and Administrative Law Judge in this case is S. Anthony Taggart, Director, Division of Securities, 160 East 300 South, Box 146760, Salt Lake City, Utah 84114-6760, telephone (801) 530-6600. The Division will be represented by the Utah Attorney General's Office, Box 140872, 160 East 300 South, Salt Lake City, Utah, 84114, telephone (801) 366-0310.

You may attempt to negotiate a settlement of the matter. Should you so desire, please contact the Utah Attorney General's Office. Questions regarding the Petition and Notice of Agency Action may be directed to Jeff Buckner, Assistant Attorney General, 160 E. 300 South, PO Box 140872, Salt Lake City, Utah, 84114-0872, telephone (801) 366-0310.

DATED this 5th day of April, 2002.



S. Anthony Taggart
Director, Division of Securities
Utah Department of Commerce

CERTIFICATE OF SERVICE

I certify that on the 15th day of April, 2002, I mailed, by certified mail, a true and correct copy of the Petition for Order Revoking License and Notice of Agency Action to the following Respondents:

Kimberly Securities, Inc.
775 Park Avenue, Suite 145
The Huntington Atrium
Huntington, NY 11743
Certified #: 7000167000502237700

Kimberly Misaraca
Kimberly Securities, Inc.
775 Park Avenue, Suite 145
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Philip Hourican
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Darren Towle
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Certified #: 70001670000582237912

Anthony Giunta
92 Shinnecock Ave.
Mastic, NY 11950

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John P. Donovan
24 Indiana Ave.
North Babylon, NY 11706

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Joseph G. Scali, Jr.
78 Pell Terrace
Garden City, NY 11530

Certified #: 70001670000582237912

VERA R. NICHOLS